

GENERAL CONTRACTUAL TERMS AND CONDITIONS OF ACTIFY EUROPE GMBH, ACTIFY INC. AND ACTIFY EUROPE LTD.

PART 1: GENERAL

1. Parties, Scope of Application, Exclusive Validity

- 1.1. These General Contractual Terms and Conditions of Actify Europe GmbH (Otto-Hahn-Strasse 13b, 85521 Riemerling) and Actify Inc. (101 California St, Suite 2710, San Francisco CA 94111, USA) as well as Actify Europe Ltd. (14-18 Hill Street, Edinburgh, EH2 3JZ, United Kingdom) – hereinafter jointly or individually referred to as “Actify” – apply to the Contract with the client into which they are included.
- 1.2. These General Contractual Terms and Conditions furthermore apply to all later Contracts for services specified in paragraph 3 between Actify and the client in the version respectively applicable at the time without this having to be included again.
- 1.3. Actify’s range of services is addressed solely to business customers. Actify reserves the right to check the client’s business customer status and refuse contractual offers from consumers.
- 1.4. These General Contractual Terms and Conditions apply exclusively to the contractual relationship. The client’s Contractual Terms and Conditions, even if Actify is aware of these, do not form an integral part of the Contract, unless Actify has expressly approved their application in writing.
- 1.5. These General Contractual Terms and Conditions in their respective current version can be viewed on and downloaded from the Actify websites. Actify will send the client these General Contractual Terms and Conditions in writing on request.

2. Contractual Components, Conclusion of Contract, Amendment of Contract

- 2.1. The Contract between Actify and the client consists of the following components (in descending order of importance):
 - a) the offer,
 - b) where available, the Order confirmation,
 - c) these General Contractual Terms and Conditions (Parts 1-5),
 - d) and the bill
- 2.2. Binding offers from Actify are to be accepted by the client within 5 working days, unless a different commitment period is specified. A later acceptance or an amendment by the client constitutes a new offer.
- 2.3. The conclusion of the Contract can be made in the following languages: German, English. In the event of doubts or inconsistencies in the interpretation of Contractual Terms and Conditions, it is solely the German language version which is legally binding. The latter applies in particular in the case of these General Contractual Terms and Conditions.
- 2.4. Actify is entitled to amend these Contractual Terms and Conditions with the client’s approval during the term of a Contract. The client’s approval is taken as given provided the client receives the amended Contractual Terms and Conditions in writing with the amendment notification and the client does not contradict the amendment within four weeks after receipt of the amendment notification. Actify undertakes in particular to point out to the client with the amendment notification the consequences of failure to raise objections.

3. Services, General Rights and Duties of Actify

- 3.1. Actify provides inter alia the following services:
 - a) Sale of software products,
 - b) Leasing of software products,
 - c) Maintenance of the respective software products provided as well as other services.

- 3.2. For the services under paragraph 3.1 a) it is primarily the Conditions of Part 2 of these Contractual Terms and Conditions which apply, for the services under paragraph 3.1 b) it is those of Part 3 and for the services under paragraph 3.1 c) it is those of Part 4 and 5.
- 3.3. The scope of performance and range of functions are based on the contents of the respective offer and the Order confirmation as well as on the service descriptions of Parts 2-5 of these Contractual Terms and Conditions. Unless otherwise agreed as mentioned above, the following paragraphs are applied.
- 3.4. Actify provides all services diligently and in accordance with proven standards commonly applied on the market. To this end, it employs personnel with sufficient expertise.
- 3.5. The suitability of the services from Actify for a specified purpose only becomes part of the agreed quality level if this was expressly assured or confirmed by Actify in writing.
- 3.6. As a general rule, work is carried out at Actify's premises. The Actify software is provided online for individual download as well as for individual installation and configuration by the client. If, in exceptional cases, work has to be carried out at the client's premises, the personnel employed by Actify will observe those security and work regulations specifically laid down by the client and expressly drawn to their attention in detail. Unless otherwise agreed, travel to the client's premises is to be reimbursed separately.
- 3.7. Within the framework of providing its services, Actify also takes adequate account of the client's material, non-material and organisational needs, insofar as these were notified by the client. Nevertheless, Actify remains free to choose the method and technical implementation to achieve the agreed result.
- 3.8. Actify is entitled to the delivery of part services. The client can, however, refuse part services insofar as and to the extent that these are unusable individually.

4. Client's Duties and Obligations

- 4.1. The client fulfils general duties to cooperate to the extent required, in particular
 - a) it downloads the required software and/or corresponding updates/patches, installs them on to its IT system, server etc. and configures them in accordance with the client's requirements,
 - b) the client allows the staff and authorised representatives of Actify access to its business premises and instructs them on the specific safety and work protection regulations to be observed, if, in exceptional cases, it is necessary for work to be carried out at the client's premises,
 - c) the client provides, to the extent necessary, for work being carried out at the client's premises, work spaces with network, Internet and telephone connection, meeting facilities and facilities for accessing IT systems and resources,
 - d) the client provides secure facilities for remote access to IT systems and resources,
 - e) the client appoints a responsible contact person authorised to take decisions on the coordination of the services being carried out by Actify,
 - f) the client provides, to the extent necessary, information on the hardware, infrastructure, software and the respective allocation or configuration of these, and
 - g) the client, if necessary, provides the infrastructure and environment into which the software is to be integrated.
- 4.2. The client regularly carries out data back-ups to an adequate extent and at adequate intervals to meet the needs for protecting the respective data. The client especially ensures that a current and fully comprehensive data backup is available before Actify gets to work on systems that process client's real data productively.
- 4.3. The client promptly informs Actify about changes to hardware, infrastructure, software and their configuration, insofar as these changes can have effects on Actify's services.

- 4.4. In cases where Actify is asked to advise the client before software purchases are made, the client carefully checks for accuracy, or at least for plausibility, all assumptions and starting points referred to as such which Actify requires for its recommendations and services and informs Actify immediately of discrepancies or faults.
- 4.5. The client ensures that for each piece of third-party proprietary software which is used by Actify staff or contractors at the client's premises or installed at the behest of the client, there exist adequate rights of use. This also applies to other materials which are subject to proprietary rights or any other commercial property rights.
- 4.6. Further duties and obligations under Parts 2-5 of these Terms and Conditions remain unaffected.

5. Product Selection and Suitability

- 5.1. The suitability and practicality of the configuration ordered for the Actify software licences for the client's purposes shall only be subject matter of the Contract, if and insofar as Actify has itself analysed the planned use at the client's premises and confirmed the suitability or practicality in writing.
- 5.2. If, as usually, the choice of the configuration of the products is made by the client or by Actify on the basis of information supplied by the client, then the suitability and practicality do not become a subject matter of the Contract or only insofar as accurate and complete information was supplied on the planned use.

6. Installation and Configuration

Installation and configuration of the Actify software which runs on the client's systems are not part of the granting of Actify software regardless of the concrete nature of the Licence (Purchase or Rental) and are not warranted by Actify. They are in each case implemented by the client who is responsible for them, unless otherwise agreed separately.

7. Service Provision by Third Parties

Actify is entitled to provide individual or all services by third parties (e.g. subcontractors). The client can object to the use of a specific third party at least in writing in the event of there being serious justified doubts on its reliability, performance or professional competence.

8. Date of Delivery

Delivery deadlines are non-binding, unless Actify has expressly indicated or confirmed a delivery date in writing as binding.

9. Place of Fulfilment

Actify will provide the client with the necessary software and/or corresponding updates and/or patches for data transfer. The parties agree on the Head Office of Actify Europe GmbH as the place of fulfilment for the delivery of the Actify software.

10. Terms of Payment

- 10.1. The client undertakes to make payment of the agreed remuneration in accordance with the invoice issued by Actify.
- 10.2. All prices are net prices and are understood as being subject to VAT at the appropriately applicable level.
- 10.3. All prices apply for performance at the Head Office of Actify Europe GmbH, unless agreed otherwise. Particularly for the delivery of software what apply are the prices EXW ("ex-works" in accordance with Incoterms 2010) unless expressly agreed otherwise.

- 10.4. The client's payments are due immediately and are to be made by the agreed payment date, otherwise within 15 calendar days from the receipt of the invoice. Monthly, quarterly or annually recurring payment obligations are respectively due on the 1st and are to be fulfilled in advance by the 10th calendar day of the month, quarter or year.
- 10.5. The client is not entitled to discounts or other deductions.
- 10.6. Any travel costs and expenses are to be reimbursed as agreed. In the absence of a different agreement, what is to be reimbursed are:
 - a) travelling times which are not chargeable in some other way as working hours in accordance with the agreed parameters,
 - b) 0.50 euro per kilometer for distances covered by motor vehicle, as well as
 - c) costs for journeys made by other means of transport and miscellaneous expenses for the amount actually incurred.

11. Performance Date, Delay

- 11.1. The client falls, without a further reminder being necessary, into arrears if it does not make a due payment by the agreed payment date, otherwise within 15 calendar days from the receipt of the invoice.
- 11.2. If the client falls into arrears on a payment, then what applies are the statutory consequences for default involving payment of the sum owing on the due payment date as well as interest on arrears amounting to nine (9) percentage points above the base interest rate plus a lump sum administrative fee of 40 euros.
- 11.3. Actify falls into arrears if a performance deadline expressly agreed or confirmed at least in writing as binding is culpably not complied with. If a performance deadline is not expressly agreed or confirmed as binding in writing, then Actify falls into arrears only after the futile expiry of a reasonable extension to be set by the client for Actify's performance to be made which as a rule may not end before 14 calendar days after the performance date initially notified.
- 11.4. If Actify falls into arrears with a contractual obligation then what applies are the statutory consequences unless Actify is not responsible for the delay. In particular, Actify is not involved in a delay if performance deadlines are rescheduled because the client has not fulfilled its cooperation duties either not at all, or incompletely or erroneously.

12. Contract Term, Termination

- 12.1. The contractual relationship ends with complete fulfilment of the contractual duties or on the agreed ending to the Contract. If the Contract is concluded for an indefinite period, even with the agreement on a minimum Contract term, then the Contract ends by termination.
- 12.2. If a Contract is concluded for an indefinite period, then either party can at any time terminate the Contract after the expiry of the minimum Contract term, with a notice period of five (5) weeks before the expiry of the Contract, unless it is agreed otherwise and nothing else arises from Parts 2-5 of these Contractual Terms and Conditions.
- 12.3. Further and/or different termination options in accordance with Parts 2-5 of these Contractual Terms and Conditions as well as the right to termination for good cause remain unaffected.

13. Force Majeure

- 13.1. Actify is not liable for incidents of force majeure which considerably hamper the contractual performance of Actify, temporarily impede or make impossible the orderly implementation of the Contract. Reckoned as force majeure are all circumstances independent of the will and influence of the parties such as natural disasters, government measures, decisions by the Authorities, blockades, war and other military conflicts, mobilisation, civil unrest, terrorist attacks, strikes,

lockouts and other industrial unrest, confiscations, embargoes or other miscellaneous circumstances which are unforeseeable, weighty and not in any way due to the parties' culpable behaviour and occur after the conclusion of this Contract.

- 13.2. Actify will immediately inform the client in writing after the occurrence of the incident of force majeure about the state of the incident, the time and date of when it occurred as well as the likely effects of the occurrence on its ability to fulfil its contractual obligations.
- 13.3. Actify will immediately after the end of the incident of force majeure notify the client that it has ended and resume the fulfilment of its obligations.
- 13.4. Actify will undertake everything in its power which is necessary and reasonable to reduce the extent of the delay or non-fulfilment and their consequences which had been caused by force majeure. This also then applies if the cause of the delay or non-fulfilment does not fall within its own area of responsibility. Any additional costs are to be borne by that party within whose area of responsibility the cause lies. If this is not ascertainable, the parties bear equal shares of the additional costs involved.
- 13.5. As soon as it is certain that the occurrence of force majeure will last for more than three (3) months, the client is entitled to terminate the (part)-performance involved with a period of notice of four (4) weeks. In this case too, para. 13.4 is applicable.

14. Third-Party Rights, Exemption

- 14.1. Each party ensures that by the provision of its contractual service, fulfilment of its personnel's duties and obligations, or the use of a contractual service as well as in connection with the aforesaid duties/obligations, no applicable laws, official decrees or third-party rights are being infringed.
- 14.2. Each party releases the other party from any third-party claims on account of infringement of property rights, applicable laws or official decrees on first written request. This release obligation also comprises meeting all the expenses including reasonable prosecution and defence costs which are incurred by the other party in connection with the claim by third parties. This does not apply if the party being claimed against proves that it is not liable for the infringement of duty forming the basis of the third-party claim.

15. Confidentiality and Secrecy

15.1 Both parties undertake to keep secret all confidential information from the area of the other party and not use it for its own purposes or the purposes of third parties unless the use is essential in accordance with the purpose of the Contract, for the assertion of rights against the other party or for the fulfilment of statutory or official obligations. The obligation of secrecy also comprises in particular the duty to take appropriate measures to prevent the unauthorised perusal of information by third parties.

15.1.1. Confidential information is all information,

- a) which is expressly identified or designated as confidential,
- b) which belongs to the information protected under **Clauses 17 and 18 UWG** (German Unfair Competition Act) (or comparable statutory regulations), especially Know-How, or
- c) on which the interest to maintain secrecy of the disclosing party arises from the nature of the information.

If information is embodied on a data carrier, the confidentiality and obligation to maintain secrecy are also extended to include the data carrier.

15.1.2. Confidential information comprises no information

- a) which is in the public domain,
- b) which is known to the recipient party solely through its own research and development,

- c) in respect of which the disclosing party has waived its rights of secrecy, or
- d) which was known to the receiving party somehow other than through the disclosing party without a duty to maintain secrecy being thereby infringed.

15.2. The client may only forward or make known to third parties in particular work results from contracts which are subject to these General Contractual Terms and Conditions as well as any information on them insofar as this is essential for the performance of this Contract or as Actify has previously agreed to this in writing.

15.3. All documents made available to Actify by the client for the provision of the service remain in the ownership of the client and along with all duplicates, copies, etc. are issued on request to the client or at the latter's request destroyed. Data on electronic media and data carriers which cannot be handed over are securely and permanently deleted by Actify or made securely and permanently unusable.

15.4. The obligations of this paragraph 15 are also valid beyond the contractual period, unless some different provision is made.

16. Data Protection

16.1. The client will observe the respectively applicable current data protection Regulations, particularly those applicable in Germany (DS-GVO, BDSG new), and ensures that the persons authorised to process personal data have committed themselves to confidentiality or are subject to an appropriate statutory duty of nondisclosure.

16.2. If the client itself, or by some software obtained through Actify, collects, processes or uses personal data, then it must guarantee that it is authorised to do so in accordance with the applicable Regulations, particularly the data protection Regulations and releases Actify in the event of a breach on first request from third party claims.

17. Warranty

Unless agreed otherwise, particularly in Parts 2-5 of these Terms and Conditions, it is the statutory warranty law forming the basis of the type of Contract for the respective service provided by Actify that applies.

18. Liability

18.1. The parties are liable to one another in accordance with the general statutory Regulations, provided the respective other party asserts claims for damages which are based on intent or gross negligence (including intent or gross negligence of the representatives or auxiliary agents of the parties).

18.2. Insofar as claims against Actify are based on the negligent breach of a material contractual obligation, the fulfilment of which is necessary for due and proper performance of the Contract, the breach of which jeopardises the fulfilment of the Contract and on the fulfilment of which the client may regularly rely, Actify's liability for damages is limited to the foreseeable damages typically arising.

18.3. The liability for culpable injury to life, body or health remains unaffected.

18.4. The liability under the product liability law as well as the liability under Art. 82 DS-GVO remain unaffected.

18.5. Apart from that, Actify's liability towards the client is excluded.

19. Contractual Penalty

In the event of a breach of Clause 15 (Secrecy) the client commits itself with the waiver of the plea of the connecting link for each culpable breach of duty to the payment of a contractual penalty. The amount of the contractual penalty is set by Actify at its fair and equitable discretion at between 5,001 euros and 50,000 euros. The appropriateness of the amount of the contractual penalty can be judicially reviewed in cases of dispute. The amount of the contractual penalty has to take into account the significance of the breached obligation, the (also immaterial) disadvantage for Actify and the degree of culpability.

20. Reference Client

The client grants Actify revocably and free of charge the right to use its company name and logo for reference purposes on Actify websites and advertising materials. A revocation must be declared to Actify at least in writing.

21. Offsetting and Retention

- 21.1. Offsetting is excluded for the client. This does not apply provided that with the counterclaim the breach of a main contractual obligation pursuant to Clause 320 of the German Civil Code is asserted or the counterclaim was legally established or is undisputed.
- 21.2. The client is entitled to retention rights only insofar as its counterclaims are legally established or undisputed and refer to the same contractual agreement. Apart from that, the client is not entitled to any retention rights.

22. Transfer of Contract

The client can transfer to third parties the rights and obligations under this Contract wholly only after prior written consent from Actify, whereas Actify is entitled to transfer the rights and obligations under this Contract to a Group company without consent from the client pursuant to Clause 15 of the Companies Act.

23. Written Form

Amendments, additions and the cancellation of these Terms and Conditions to be effective require to be in written form. This also applies to the amendment of this Written Form clause itself. The aforesaid requirement for the Written Form is not applicable for agreements which are reached verbally between the parties after the conclusion of the Contract. In this case also, the parties are agreed that a written confirmation is necessary for the content of a verbal agreement. For compliance with the Written Form within the meaning of these General Contractual Terms and Conditions, the Written Form as intended under Clause 126b of the German Civil Code is sufficient.

24. Final Provisions

- 24.1. For the contractual relationships between Actify and the client, also including these General Contractual Terms and Conditions, it is German law which applies except the UN Sales Convention.
- 24.2. If the client is a merchant, a legal person of public law or has assets governed by public law, for all disputes which arise from or in connection with these General Contractual Terms and Conditions, jurisdiction lies with the Court of Munich unless any different exclusive competence exists. Actify is nevertheless entitled to bring an action at the client's Head Office.
- 24.3. For the sake of good order, it is made clear in addition to paragraph 2.3 above that in the event of doubts or inconsistencies relating to provisions of these General Contractual Terms and Conditions only the German version is relevant and legally binding.

PART 2: SALE OF SOFTWARE (LICENCES)

1. Scope of Application and Extent

- 1.1. This Part 2 of the Contractual Terms and Conditions applies to the transfer of Actify software by purchasing. It refers exclusively to compiled object code which is supplied to the client as an executable data file or files and runs on the client's computers, servers or (virtual) instances.
- 1.2. No rights on the source code of Actify software are provided to the client.
- 1.3. As a matter of form it is made clear that transfer of software which was individually produced or processed for the client is not covered by Part 2 of these Contractual Terms and Conditions. What is involved is the transfer by purchase of standard software.
- 1.4. In the absence of separate agreements, installation and configuration services do not form part of the Purchase Contract.

2. Warranty

- 2.1. The statutory sales warranty law applies with the following proviso:
- 2.2. The client's warranty claims come under the statute of limitations after one (1) year from the statutory start of the limitation period. The aforesaid Regulation does not apply in cases of a liability on the part of Actify for culpable injury to life, body or health as well as in cases of a liability on the part of Actify for claims for damages which are based on intent or gross negligence (including intent or gross negligence of the representatives or auxiliary agents of Actify).
- 2.3. The client has to inspect the software provided for its functionality immediately after receipt in accordance with Clause 377 of the German Commercial Code and immediately notify Actify of any obvious defects. Otherwise a warranty for these defects is excluded. This also applies if such a defect appears later.
- 2.4. Actify is entitled to fulfil warranty claims at the client's premises. Actify, however, also fulfils its obligation on subsequent improvement if it provides downloadable updates with an automatic installation guide and offers the client telephone support to solve any installation problems which might occur.

3. Software Right of Use

- 3.1. Actify provides the client with the following rights of use in relation to the provided software:
- 3.2. Until the full payment of the agreed fee, the client receives a simple temporary non-transferable right to install the software on its systems and use it for test purposes. The use in actual productive operation, i.e. for the client's business purposes, is not permitted.
- 3.3. Subject to the condition precedent of the full payment of the agreed fee for the software purchase, the client receives a simple, indefinite right to the use of the software on the agreed number of IT systems (depending on the agreement, individual or multi-user), on which solely data for the client or affiliated companies is processed (Clause 15 of the Companies Act). Without the consent of Actify, this right of use is transferable only to affiliated companies.
- 3.4. The client receives the right to use the software also on IT systems on which (also) data for third parties is processed (e.g. clients of the client, multi-mandate systems in environments used collectively) only provided such a use was expressly agreed in the Contract or presumed by both parties.
- 3.5. The Actify software may be used at the same time only by up to a maximum of the number of natural persons permissible under the Agreement (single-user licence/network licence). The permissible use comprises the installation of the contractual software, the loading into the main memory as well as the approved use by the client.

On no account does the client have the right to rent out or in any other way license, publicly reproduce wired or wireless, make accessible or provide to third parties against payment or free of charge, the Actify software purchased.

Any statutory rights of duplication, representation or use remain unaffected.

- 3.6. If the client uses the Actify Software to an extent which exceeds the usage rights purchased in terms of quality (in view of the type of use permitted) or in terms of quantity (in view of the number of licences purchased), it will immediately purchase the necessary usage rights from Actify for the use permitted. If the client fails to do this, Actify can and will immediately assert the rights to which it is entitled.
- 3.7. The client only receives rights to the source code as well as further rights to the object code, particularly on the use of duplication for its own purposes, the translation, processing and distribution right and the right to public reproduction provided that the granting of these rights was expressly agreed in the Contract or presumed by both parties.
- 3.8. Apart from that, all rights to the software, to which the client is not entitled as a result of laws, remain with Actify.

4. Security Measures, Usage Tracking and Audit

- 4.1. The client will secure the Actify software as well as any login data for online access from access by unauthorised third parties. In particular, all copies of the Actify software as well as login data are to be stored in a protected location.
- 4.2. Actify reserves the right to check whether the use of the Actify software by the client goes beyond the level agreed. Actify carries out this check on usage as follows:
- 4.3. Actify can at any time demand information from the client on the type and extent of the actual use of the Actify software. This information is, as far as possible, to be issued by the submission of appropriate usage reports generated by the Actify software. Actify undertakes, in the assertion of information demands, to take into account the administrative expense respectively incurred and the client's efficiency, in order to avoid unreasonable interference in the client's business operations.
- 4.4. If Actify has justified doubts on the accuracy or comprehensiveness of the information given by the client, Actify can have the data required to determine the level of use collected by its own staff or independent third parties bound to secrecy in the client's offices or IT operations rooms (an "Audit"). The client is bound to facilitate the access to the necessary information either by a system login to the necessary resources or providing a member of staff who has access to the requisite resources. Each party basically bears its own costs itself. The client bears all the costs of the audit provided that an actual use of the Actify software is determined which exceeds the agreed use by more than 15%.

5. Software-Maintenance

- 5.1. The software purchase from Actify includes a one-year Software-Maintenance Package. Thereafter, the Software-Maintenance Package – unless otherwise arranged – is automatically extended respectively by a further year (Details on this at: Part 4, Clause 5.2).
- 5.2. Legal regulations on the Maintenance Package and the corresponding Actify services can be found in Part 4 of these General Contractual Terms and Conditions.

PART 3: RENTAL OF SOFTWARE (LICENCES)

1. Scope of Application and Extent

- 1.1. This Part 3 of the Contractual Terms and Conditions applies to the renting out of Actify software for a limited period. This refers solely to the object code which is provided to the client as executable data and runs on the client's computers, servers or (virtual) instances.
- 1.2. The client is not granted any rights on the Actify software source code.
- 1.3. As a matter of form it is made clear that the renting out of software which was individually produced or processed for the client is not included in Part 3 of these Contractual Terms and Conditions. What is involved is the renting out of standard software.
- 1.4. Installation and configuration services are not, in the absence of separate agreements, the subject of the rental Contract.

2. Restricted Usage Right for Test Purposes

- 2.1. Actify provides the client on agreement of a test access or up to the full payment of the agreed fee with a simple, non-transferable usage right to the Actify software restricted in terms of time, territory and content, with installation, as follows:
- 2.2. The customer has the right to install the Actify software on its systems and use it for test purposes. The use in productive operation, i.e. for the client's business purposes, is not permitted.
- 2.3. The usage right in terms of territory is restricted to Germany, unless otherwise agreed.
- 2.4. The usage right ends with the full payment of the agreed fee for the transfer of the software, but no later, however, than two (2) months after installation of the Actify software.
- 2.5. Apart from that, all rights to the Actify software to which the client is not entitled by law remain with Actify.
- 2.6. Provided no other usage right directly follows this usage right for test purposes, the Actify software is to be removed immediately after the termination of the usage right from all computers, servers or (virtual) instances. The data carriers provided to the client are to be returned to Actify.

3. Temporary Usage Right

- 3.1. Provided that in the Contract a temporary provision of the Actify software was agreed, Actify grants the client the following simple usage right restricted in terms of time, territory and content:
- 3.2. The client has the right to install and use the Actify software on the agreed number of computers or servers.
- 3.3. The usage right is restricted in terms of content to the use on computers or servers on which data is processed for the business purposes of the client and affiliated companies pursuant to Clause 15 of the Companies Act. The use also for computers, servers or (virtual) instances on which data for third parties (e.g. clients of the client) is processed is permitted provided and to the extent that this has expressly been agreed on with Actify.
- 3.4. The usage right in terms of territory is restricted to the client's premises as indicated in the Contract. If no locations are indicated in the Contract, the usage right is restricted to the main location of the client's computers or servers. Usage at other locations requires approval by Actify.
- 3.5. The Actify software may be used simultaneously by only the maximum number of natural persons as per the Agreement. The permissible use comprises the installation of the Contract software, the loading into the main memory as well as the approved use by the client.

On no account does the client have the right to rent out or in any other way license, publicly reproduce wired or wireless, make accessible or provide to third parties against payment or free of charge, the Actify software purchased.

Any statutory rights of duplication, representation or use remain unaffected.

- 3.6. If the client infringes one of the aforesaid Conditions, all usage rights granted within the framework of the Contract immediately become ineffective and automatically revert to Actify. In this case the client has to stop the use of the software immediately and totally, delete all copies of the software installed on its systems as well as backup copies or hand them over to Actify.
- 3.7 The client is only granted the rights on the source code, as well as further rights to the object code, particularly the use for its own purposes stemming from duplication, the translation, processing and distribution right and the right to public reproduction provided that the granting of these rights was expressly agreed in the Contract or presumed by both parties.
- 3.8 The usage right is basically temporary but failing due notice before the end of the agreed usage period as per Clause 4 it automatically continues to run.
- 3.9 The usage right is not transferable.
- 3.10 Apart from that, all rights on the Actify software to which by law the client is not entitled, remain with Actify.
- 3.11 After termination of the usage right, the Actify software is to be removed immediately from all computers, servers or (virtual) instances. Data carriers provided to the client are to be returned to Actify.

4. Termination and End of Contract

- 4.1. If neither of the parties terminates the temporary usage right with two months' notice up to the expiry of the usage period respectively agreed, the leasing relationship is automatically extended by a further year. If neither of the parties terminates the respectively extended usage right with two months' notice up to the expiry of the (prolongation) year, the leasing relationship is automatically extended by a further year.
- 4.2. Moreover, rental contracts can be terminated for good cause by either party without observing a period of notice. A termination without notice for good cause must as a rule be threatened in writing in advance with a notice period of at least two weeks and giving the reason for the termination.
- 4.3. Actify has in particular the right to termination without notice, if the client
 - a) infringes Actify usage rights by using the Actify software to an extent in excess of that permitted under the contractual Regulations and does not remedy the infringement within a reasonable time in spite of a written warning.
 - b) falls behind with payment over a period of more than two months with an amount which corresponds at least to the annual fee for the use of the Actify software.
- 4.4. Furthermore, Actify has the right to termination without notice of a temporary usage arrangement on Actify software, if a significant defect in the Actify software cannot be fixed after at least two attempts at improvement or the remedial action on the defect would be likely to exceed the fivefold amount of the agreed monthly fee for the use of the Actify software.
- 4.5 Each termination, to be effective, requires to be in written form pursuant to Clause 126b of the German Civil Code.
- 4.6. On termination of the Contract, irrespective of whether by orderly termination or without notice, the client has to cease using the software and remove all installed copies of the Actify program from its computers as well as at Actify's discretion to give back immediately to Actify or destroy any backup copies created. On first request from Actify, the client affirms in writing that all existing software copies and corresponding data carriers have been deleted or destroyed.

5. Warranty

For the temporary transfer of Actify Software as intended under Clauses 2 and 3 of this Part, the statutory warranty law applies with the following provisos:

- 5.1. The warranty for initial defects in the Actify software is excluded, provided Actify is not responsible for the defect.
- 5.2. The correction of defects which occur during the usage time is carried out with the following provisos:
 - The client will immediately notify Actify of any defects, interruptions in the operational readiness or other deficiencies known to it and indicate the service involved along with the details known to the client, particularly on the error indication shown.
 - Actify attends to the defect within a reasonable time and to a reasonable extent and will undertake reasonable commercial efforts.

The warranty does not comprise any improvements, function extensions, training sessions or answers to user queries on operation.
- 5.3. Actify has the right, at its own option, to deal with the remedial action either by providing patches or a later Release Version of the entire Actify software or parts of it.
- 5.4. Actify has the right to see to the rectification also by so-called workarounds which do not remove the actual cause of the defect but only as this impacts on the client.
- 5.5. Actify can refuse the rectification until the client has paid at least 80% of the agreed fee due for the use of the Actify software, unless in view of the seriousness of the defect, a retention of more than 20% is reasonable.

6. Security Measures, Usage Tracking and Audit

- 6.1. The client will secure the Actify software as well as any login codes for online access by appropriate measures to prevent access by unauthorised third parties. In particular, all copies of the Actify software as well as the access codes are to be kept safe in a protected site.
- 6.2. Actify reserves the right to check whether the use of the Actify software exceeds the extent agreed by the client. Actify carries out this check on use as follows:
 - 6.2.1. Actify reserves the right, for the purpose of this check on use, to install in copies of the Actify software which are provided to the client on a temporary basis a function which restricts the operational efficiency of or completely deactivates the Actify software after the end of the agreed usage period. Actify will notify the client in good time of the use of such a function.
 - 6.2.2. Actify can at any time ask the client for information on the type and extent of the actual use of the Actify software. This information is, as far as possible, to be obtained from the presentation of the reports appropriately created by the Actify software. Actify undertakes, when asserting the requests for information, always to take into account the administrative expense incurred, in order to avoid unreasonable interference in the client's business operations.
 - 6.2.3. If Actify has justified doubts on the accuracy or comprehensiveness of the information given by the client, Actify can have the data required to determine the level of use collected by its own staff or independent third parties bound to secrecy in the client's offices or IT operations rooms (an "Audit"). The client is bound to facilitate the access to the necessary information either by a system login to the necessary resources or providing a member of staff who has access to the requisite resources. Each party basically bears its own costs itself. The client bears all the costs of the audit provided an actual use of the Actify software is determined which exceeds the agreed use by more than 15%.

7. Software-Maintenance

- 7.1. The software rental from Actify includes a Software-Maintenance Package for the term of the Contract.
- 7.2. Legal regulations on the Maintenance Package and the corresponding Actify services can be found in Part 4 of these General Contractual Terms and Conditions.

PART 4: MAINTENANCE

1. Scope of Application

This Part 4 of the Contractual Terms and Conditions applies to Maintenance Services which Actify provides in the course of the purchased or rented transfer of Actify software.

2. Maintenance Services and Service Obligations of Actify

2.1. The content and service obligations of Actify within the framework of the (remote) maintenance of the Actify software are determined, in the absence of any separately reached agreements, particularly in respect of its service level and reporting obligations, on the basis of the following provisions.

2.2. Actify provides the following maintenance services:

- Updates, upgrades and/or patches relating to the purchased or rented transferred Actify software are provided.
- A telephone hot line and an email address are held ready to answer queries and/or requests for help to a reasonable extent from clients.

2.3 Provided that for the Service and Maintenance Services from Actify no Service Level has been separately agreed Actify provides the Maintenance, Service and Support services within a reasonable time and to a reasonable extent and will undertake reasonable commercial efforts.

3. Client's Obligations to Cooperate

The client will automatically carry out the necessary acts of cooperation, especially downloads, configurations, etc. If the client does not do this, it has no claim against Actify for the provision of further or other Maintenance services.

4. Remuneration

A remuneration for the services provided by Actify is due by the client on the following terms:

- Within the framework of the rented transfer of Actify software (Part 3 of these General Contractual Terms and Conditions) the client does not owe any separate remuneration. The Maintenance services are comprised in the agreed regular fee and fully settled with the payment of that fee.
- In the first year after the purchased transfer of Actify software (Part 2 of these General Contractual Terms and Conditions) the client owes remuneration that is separately identified, but satisfied with the purchase price. The Maintenance services for the first year after the purchased transfer of the software are contained in the agreed purchase price and fully settled with the payment thereof.
- For the use of Maintenance services after expiry of the first year of the purchased transfer of Actify software (Part 2 of these General Contractual Terms and Conditions) the client owes an annual fee in accordance with the respective Actify offer. The amount of the fee depends on which type of Maintenance Option (with or without automatic Maintenance extension) the client chooses.

5. Existence of the Maintenance Contract, Automatic Extension, Termination

5.1. With rented transfer of the Actify software, maintenance is included in the software usage fee. The Maintenance Contract shares the fate of the respective rental Contract,

5.2. With purchased transfer of the Actify software, the further existence of the Maintenance Contract (the so-called Follow-up Contract) depends on the Maintenance option ("with automatic Maintenance extension" or "without automatic Maintenance extension") chosen when concluding the Purchase Contract:

- If the client chooses the "with automatic Maintenance extension" option, the Maintenance Contract does not automatically end in the case of purchased transfer of the Actify software. After expiry of the

first year after purchased transfer of the Actify software, the Software Maintenance Contract, unless terminated by the client, is extended by a further year and after expiry of this year, unless there is corresponding termination, it is extended by yet a further year. The conditions for the respective extension stem from the original Agreement.

The period of notice for the termination of the Maintenance Contract in the case of one "with automatic Maintenance extension" is 30 days prior to the expiry of the current Maintenance period. The termination under Clause 126b of the German Civil Code must be in made in writing.

- If the client chooses the "without automatic Maintenance extension" option, the Maintenance Contract ends in the case of purchased transfer of the Actify software – in the absence of the timely extension by the client of the Maintenance services - automatically. Actify reserves the right in the event of a "without automatic Maintenance extension" to make the client an offer before the end of the Contract for the extension of the Maintenance Contract.
 - If the client fails, within the framework of its Contract Declaration, actively to choose one of the two Maintenance options, the option "with automatic Maintenance extension" is deemed as selected.
- 5.3. If the Maintenance Contract in the case of the purchased transfer of the Actify-Software has been terminated on the grounds of notice (Option: "with automatic Maintenance extension") or on the grounds of expiry without extension (Option: "without automatic Maintenance extension"), the client has within 24 months from termination the opportunity to order the resumption of the Maintenance services (known as "back to maintenance") at a tariff to be agreed separately with Actify. After the expiry of 24 months, the client has the opportunity to purchase a new Purchase Licence (with maintenance included).

6. Warranty

For any warranty claims – depending on the basic type of Contract involved – it is the provisions under Part 2 Clause 2 or Part 3 Clause 6 which apply accordingly. It is made clear that any claims on defects on update, upgrade and/or patch supplies are limited to the new features of the update, upgrade and/or patch supplies compared with the previous version.

PART 5: OTHER SERVICES

1. Scope of Application

This Part 5 of the Contractual Terms and Conditions applies to services other than software maintenance services, which Actify offers its clients.

2. Consultancy services, Conceptual Design, Licence Consultation

- 2.1. Actify provides all consultancy and conceptual design services on the basis of the facts raised by Actify with the client or notified by the client.
- 2.2. Actify assumes liability for the accuracy and practicality of the consultancy only to the extent that the consultancy is based on facts raised by Actify itself. Actify is not bound to check the information and plans provided by the client for their accuracy or plausibility.

3. System Optimisation, Migration and Patch Management as well as Limitation of Liability on the Performance of these Services

- 3.1. If Actify carries out System optimisation, Migration facilities or Patch management on the client's systems, then Actify uses adequately qualified personnel for these activities.
- 3.2. Actify is not obliged to achieve a specified target status in the IT systems. Particularly within the framework of system optimisation, information on possible increases in efficiency and cost savings always refer to assessments based on typical application. Actual effects at the client's can differ from this.
- 3.3. In relation to the client's duties and obligations, particularly its obligation to carry out regular safeguards and always have current back-up versions of the System ready, reference is made to Clause 4 of Part 1 of these General Contractual Terms and Conditions (particularly also to Clause 4.2 of Part 1 of these General Contractual Terms and Conditions).
- 3.4. It is made clear that Actify is only liable for such damages that are caused by Actify software and/or Actify systems. A guarantee on the part of Actify for damages by external (third-party) systems is excluded.
- 3.5. Apart from that the provisions under Part 1, Clause 18 of these General Contractual Terms and Conditions are also applicable.

4. Training Sessions and Workshops

- 4.1. The content, scope and location of training sessions and workshops are set up in accordance with a respective Agreement to be made.
- 4.2. Actify is entitled to replace the agreed training manager by other adequately qualified colleagues in order to avoid an otherwise necessary postponement of session schedules.
- 4.3. Training sessions and workshops are – to the extent agreed – recorded in appropriate documents or in some other way for the purpose of giving a report in broad outline of the content and learning goals. Actify is not obliged to document training sessions and workshops in a way and to the extent, however, that a personal participation could be wholly or partly substituted.
- 4.4. Insofar as the client's IT systems are to be accessed within the framework of training sessions and workshops for training purposes, the client provides the connection and access possibility to a corresponding test system, on which no real production data is actually processed.
- 4.5. If training sessions and workshops take place at the client's, the latter after consultation provides the corresponding premises and presentation equipment.

5. Project Management

- 5.1. If Actify assumes the project management in a client's project, Actify carries out the agreed activities for the management and coordination of the project. Nevertheless, responsibility for the success of the project as a whole always remains with the client.
- 5.2. Within the framework of the project management and coordination, Actify advises the client about the necessary or appropriate steps to take to ensure the success of the project. Actify, within the framework of the powers agreed, works towards ensuring that the necessary or appropriate steps are taken.
- 5.3. Actify is not obliged nevertheless to find or implement steps which are to be implemented by the client or a third party beyond the agreed escalation opportunities.
- 5.4. The remuneration for activities within the framework of the project management is made on the basis of (time) expenditure by Actify. All total fees notified to the client are understood as non-binding estimates of the anticipated cost. Actify will promptly inform the client should it, in the course of the project, become apparent that the estimated cost has overrun by more than 15%. In spite of the foregoing Actify and the client may agree on a fixed price for the project management services in questions instead of remuneration referring to (time) expenditure.

6. Rights on the Results of Work

- 6.1. The client has the right to use all the results of work achieved by Actify, especially plans, concepts, presentations or analyses for the purposes set out in accordance with the Contract and other business purposes of its own.
- 6.2. The client may only publish or transfer to third parties the results of work achieved by Actify if this was expressly agreed in the Contract or under the provisions of Clauses 15.1.2. of Part 1.
- 6.3. Actify may use the results of work unrestrictedly for its own business purposes and at other clients if appropriate arrangements are reached in order to avoid the use having repercussions for the client, such as making it possible for third parties to have access to the systems and configurations used by the client or provide the client's confidential information. An agreement on the restricting of this right of use of work results by Actify requires to be in written form.

7. No Restriction on Competition

The execution of activities for the client does not prevent Actify from carrying out similar activities for third parties, especially competitors of the client. Clause 6.3 of this Part and Clause 15 of Part 1 remain unaffected. Differing agreements require to be in written form.

8. Warranty

The legal right of warranty will be applicable with the proviso that Actify is free in the choice of the place and time of the activity unless it is specifically agreed otherwise.

9. Settlement and Proof of Performance

- 9.1. Services under this Part of the Contractual Terms and Conditions are billed in accordance with the respective Agreement on the basis of (time) expenditure by Actify. In spite of the foregoing Actify and the client may agree on a fixed price for the services in question instead of remuneration referring to (time) expenditure.
- 9.2. Actify provides the client with an itemized report on the activities carried out in the agreed form or otherwise in the form usually adopted at Actify.
- 9.3. The client returns the activity report duly countersigned as factual within five (5) working days or asserts objections to the accuracy in written form. Activity reports are accepted as factually

accurate, provided no objections to the accuracy are asserted in written form within five (5) working days.

- 9.4. After receipt of the declaration of accuracy or if a letter of objection is not received within five (5) working days, Actify will submit a corresponding bill to the client.